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NO. 91-1413

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

EDDIE THOMPSON, JR.,
PETITIONER-PLAINTIFF,

vs.

CITY OF COVINGTON, JOSEPH CONDIT,
HOWARD HODGE,
RESPONDENTS-DEFENDANTS.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF APPEALS

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Because of respondents misrepresentation of facts and law of this case to the Court, petitioner feels compelled to file a reply brief.

Counsel for respondents claim that petitioner filed a suit for money damages against (respondents) alleging a conspiracy to deprive one of his tenants of rental assistance, and that the city enacted an ordinance requiring him (petitioner) to add a fire escape to rental property in order to avoid paying rental assistance to one of his tenants.

The complaint[1] reveals that petitioner filed suit against

[1] Respondents have not denied any of these allegations.

(respondents) alleging that they (respondents) had conspired against him (petitioner) on the basis of his race in enacting an ordinance requiring him (petitioner) to add a fire escape to rental property he (petitioner) owned, in order to avoid paying (petitioner) rental assistance (pursuant to a contract between the City of Covington and petitioner). (NR 1, Pet. for Cert., App. P. 1a-5a, Order Court of Appeals, App. P. 21a, 22a). Counsels for respondents are claiming that petitioner is bringing suit on behalf of his tenant, instead of suing on his own (petitioner's) rights, which is untrue.

Counsel for respondents also claim that facts are in dispute . . . that before filing answers, Condit, Hodge and the City of Covington filed a Rule 12 motion to dismiss . . .

No disputed facts are cited to this Court by counsel.

The docket sheet shows that the complaint was filed on September 14, 1990 (NR 1), Summons issued on September 17, 1990. (NR 2), Notice and acknowledgement for service by mail for all respondents, September 18, 1990. (NR 5, 6, 7). 20 days from September 18, 1990 was October 8, 1990. Counsel for respondents, Condit and Hodge, did not file motion to dismiss until October 9, 1990. (NR 2) Counsel for respondent, City of Covington, did not file motion to dismiss until October 19, 1990. (NR 3) The time to file an answer passed on October 8, 1990.[2]

In addition to answering motions to dismiss (NR 4 and 8), petitioner filed a motion to strike the motions to dismiss, as insufficient, as a matter of law. (NR 9). Respondents did not answer petitioner's motion to strike, which was grounds for granting petitioner's motion to Strike respondents' motions to dismiss. (LR 6(b)(1)(A) and LR 6(e).

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[2] Counsel for respondents admitted that these same allegations were filed in federal court in 1978 and in state court in 1986. Respondent did not deny allegations then and are barred by the doctrine of estoppel from doing so now.

Counsel claims[3] that respondents have not admitted a fifteen (15) year statute of limitation . . . (or) all the allegations of the complaint . . .

Counsel's summary of the argument is no argument. There is no argument that a one (1) year statute of limitations is applicable to a case where City and two of its officials conspire against (petitioner) on the basis of his race in enacting an ordinance requiring (petitioner) to add a fire escape to rental property (petitioner) owned, in order to avoid paying — rent due under a contract. See Court of Appeals' order affirming. (Pet. for Cert. App. P. 22a)

Counsel for respondents argue that: (1) petitioner simply ask this Court to overrule *Owens* v. *Okure* and *Collard* v. *Kentucky*, and (2) If this case is not dismissed for reasons of limitations it will be dismissed on grounds of res judicata for it has been filed and dismissed in the Federal District Court in the late 1970's and filed and dismissed in the Kentucky Circuit Court in the 1980's.

(1) Counsel's argument and assertions that petitioner has asked this Court to overrule *Owens* v. *Okure* are not true. To the contrary petitioner has cited *Owens* v. *Okure* as authority for overruling *Collard* v. *Kentucky* and maintains that the *Collard* Court misconstrued "personal injury" as articulated in all published decisions of the U.S. Supreme Court. (See Pet. for Cert. P. 23, 21, 28)

(2) If a federal plaintiff's claim under 42 USC § 1983 and state law claims are sufficiently intertwined so that the federal court abstains from passing on the federal claim without first allowing the state court to address the state law issues, the plaintiff can preserve his right to a federal forum

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[3] Respondents have not denied allegations in this complaint or any previous complaint based on the same cause of action and fail to answer requests for admissions served in this case. (NR 14) Matter is admitted if not answered within 30 days and conclusively established unless Court on motion permits withdrawal or amendment of the admission. (CR 36(a), (b).

for his federal claims by informing the state court of his intentions to return to federal court on the federal claims following litigation of his state claims in state court. *England* v. *Louisiana State Bd. of Medical* 375 US 411, 11 L Ed 2d 440, 84 S Ct 461 (1964)

Finally, counsels for respondents conclude that the filing of this action and the subsequent appeals (are) a harrassing and frivolous exercise in litigation, that should be dismissed.

Misrepresentations, such as made herein by counsel for respondents make a travesty of justice.

No lower Court made any finding of fact that this suit was harassing or frivolous.

The lack of any analogy between the law and facts of the instant case when compared to *Collard* make it clear that the Sixth Circuit Court of Appeals has decided an important question of federal Civil Rights Law in a way that conflicts with all published decisions of this Court.

Counsel for respondents: (1) failed to address the questions or issues presented in this important Civil Rights Action, (2) fail to deny that the City of Covington and its officials conspired against petitioner on the basis of his race in enacting an ordinance to avoid paying rent due on a contract, (3) fail to deny that petitioner's constitutional rights were violated when the City passed the city ordinance to avoid paying the rent because of petitioner's race, or (4) argue why a Writ of Certiorari should be denied in this case. Instead Counsel argues this petition should be dismissed.

> No motion by a respondent to dismiss a petition for a Writ of Certiorari will be received. Objections to the jurisdiction of the Court to grant a Writ of Certiorati may be included in the brief in opposition. (SCR 15.4)

No objection to the jurisdiction of the Court to grant a Writ of Certiorari are included in respondents' brief in opposition.

For all of the reasons stated here and in the Petition for Certiorari, this Court should exercise its discretion and grant certiorari.

Eddie Thompson, Jr.